

James E. Magleby (7247)

magleby@mcgiplaw.com

Christine T. Greenwood (8187)

greenwood@mcgiplaw.com

Adam Alba (13128)

alba@mcgiplaw.com

MAGLEBY CATAXINOS & GREENWOOD, PC

170 South Main Street, Suite 1100

Salt Lake City, Utah 84101-3605

Telephone: 801.359.9000

Facsimile: 801.359.9011

Attorneys for Purple Innovation, LLC

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

**PURPLE INNOVATION, LLC, A
Delaware limited liability company,**

Plaintiff,

v.

**HONEST REVIEWS, LLC, a Florida
Corporation, RYAN MONAHAN, an
individual, GHOSTBED, INC., a
Delaware corporation, MARC
WERNER, an individual, ASHLEY
WERNER, an individual, WERNER
MEDIA PARTNERS, LLC, d/b/a
NATURE'S SLEEP, LLC, an Illinois
limited liability company, and SOCIAL
MEDIA SHARKS, LLC, a Florida limited
liability company,
Defendants.**

**SHORT FORM DISCOVERY MOTION
FOR COMCAST IP ADDRESS
INFORMATION**

Case No.: 2:17-cv-00138-DB

Honorable Dee Benson

Plaintiff Purple Innovation, LLC ("Purple"), by and through its counsel of record
MAGLEBY CATAXINOS & GREENWOOD, PC, respectfully submits this Short Form Discovery
Motion for Comcast IP Address Information.

ARGUMENT

On March 6, 2018, several websites posted a fake “press release” regarding Purple’s use of its anti-tack powder, the contents of which mirrored the statements and misstatements at issue in this case. [Press Release, attached as Exhibit 1]. The Press Release was issued under the name of Defendants’ expert witness John J. Godleski (“Godleski”). Defendants deny their participation in publication of the press release and Godleski’s authorship.

After investigation, Purple learned that certain internet protocol addresses in Florida (the “IP Addresses”) were associated with the Press Release. Purple issued a Subpoena to Comcast Corporation (“Comcast”) for information about the IP Addresses. [Subpoena, attached as Exhibit 2]. Comcast responded, stating that its compliance to the Subpoena was governed by the Cable Communications Policy Act (the “Act”), and that it could not produce information without a court order. [6-6-18 Email from K. White to A. Alba, attached as Exhibit 3].

Under the Act

[A] cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned [except] ... [a] cable operator may disclose such information if the disclosure is – made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed

[47 U.S.C. § 551\(c\)](#). A court may order an Internet Service Provider (“ISP”) to disclose “personal identifiable information regarding subscribers without their consent” upon “good cause [shown].” [Warner Bros. Records v. Does 1-4, No. 2:07 CV 0424 TC, 2007](#)

[WL 1960602, at *1 \(D. Utah July 5, 2007\)](#) (authorizing ISP to “disclose personally identifiable information regarding subscribers” pursuant to [47 U.S.C. § 551\(c\)\(2\)\(B\)](#)).¹

Good cause exists for the Court to authorize Comcast to disclose the information requested in the Subpoena. Other than the IP Addresses, Purple has no information about the persons responsible for the Press Release and the misinformation contained therein. Indeed, issuing the subpoena “is the only way to identify an internet subscriber.” [Malibu Media, LLC v. Doe, No. 3:18-CV-766 \(CSH\), 2018 WL 2386068, at *3 \(D. Conn. May 25, 2018\)](#) (quotation omitted). Accordingly, Purple respectfully requests the Court to authorize Comcast to disclose the information requested in the Subpoena. The discovery sought is highly relevant to the claims at issue and proportional to the needs of the case.

CERTIFICATION

On June 6, 2018, Counsel for Purple, Adam Alba, conferred via email with Comcast Legal Analyst, Kanisha White, who invited Purple to submit this issue to the Court. [See Ex. 3].

¹ See [Strike 3 Holdings, LLC v. John Doe subscriber assigned IP address 24.118.71.191, No. 18-CV-0778 \(PJS/HB\), 2018 WL 2278111, at *5 \(D. Minn. May 18, 2018\)](#) (“[m]any courts have authorized subpoenas to be issued under [§ 551\(c\)\(2\)\(B\)](#)”).

DATED this 11th day of June, 2018.

MAGLEBY CATAXINOS & GREENWOOD, PC

A handwritten signature in blue ink, appearing to read "Adam Alba", is written over a horizontal line.

James E. Magleby

Christine T. Greenwood

Adam Alba

Attorneys for Plaintiff Purple Innovation, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MAGLEBY CATAXINOS & GREENWOOD, 170 South Main Street, Suite 1100, Salt Lake City, Utah 84101, and that, pursuant to Rule 5 of the Federal Rules of Civil Procedure, I served a true and correct copy of the foregoing **SHORT FORM DISCOVERY MOTION FOR COMCAST IP ADDRESS INFORMATION** upon the following via CM/ECF System this 11th day of June, 2018:

Ethan Horwitz
ehorwitz@carltonfields.com
CARLTON FIELDS JORDEN BURT, P.A.
The Chrysler Building
405 Lexington Ave.
New York, NY 10174-0002

Eleanor M. Yost
eyost@carltonfields.com
DLGhostBed-Utah@carltonfields.com
CARLTON FIELDS JORDEN BURT, P.A.
Corporate Center Three at International Plaza
4221 W. Boy Scout Blvd.
Tampa, FL 33607-5780

Kathryn Tunacik Smith
ksmith@strongandhanni.com
Karmen C. Schmid
kschmid@strongandhanni.com
STRONG & HANNI
102 South 200 East, Suite 800
Salt Lake City, UT 84111

Francis M. Wikstrom
FWikstrom@parsonsbehle.com
Juliette P. White
JWhite@parsonsbehle.com
Kennedy K. Luvai
KLuvai@parsonsbehle.com
ecf@parsonsbehle.com
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Attorneys for Defendant GhostBed, Inc.

Marc J. Randazza
mjr@randazza.com
ecf@randazza.com
Ronald D. Green
rdg@randazza.com
RANDAZZA GROUP, PLLC
2764 Lake Sahara Drive, Suite 109
Las Vegas, Nevada 89117

D. Gill Sperlein
dgs@randazza.com
RANDAZZA GROUP, LLM
345 Grove Street
San Francisco, CA 94102

W. Andrew McCullough
wandrew48@ymail.com
W. ANDREW MCCULLOUGH, LLC
6885 South State Street, Suite 200
Midvale, UT 84047

Attorneys for Defendants Honest Reviews, LLC and Ryan Monahan

/s/ H. Evan Gibson